

REMARKS

The Examiner is requiring restriction to one of the following groups:

Group I: Claim 3, drawn to a cosmetic composition for eyelashes wherein the surface of the polypropylene fibers of the component (A) is treated with silicic anhydride classified in class 424, subclass 70.1.

Group II: Claims 4 and 7, drawn to a cosmetic composition for eyelashes wherein the surface of the polypropylene fibers of the component (A) is treated with a fluorine compound classified in class 424, subclass 70.7.

Applicants hereby provisionally elect Group I, Claim 3, drawn to a cosmetic composition for eyelashes wherein the surface of the polypropylene fibers of the component (A) is treated with silicic anhydride, with traverse on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctiveness between the identified groups. Also, it has not been shown that a burden exists in searching the claims of the two groups.

Moreover, the MPEP at § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.”

Applicants respectfully submit that a search of all of the claims would not impose a serious burden on the Office.

Finally, Applicants respectfully submit that the invention of the two groups are not distinct. Please note that while Claim 7 is drawn to a fluorine compound-coated fiber, it is dependent on Claim 3 (of Group I) and, therefore, already has a silicic anhydride coating on it.

As for the required election of species, Applicants hereby elect the fluorine compound represented by Formula (3). Also, please be advised that Applicants have set an order of priority for three of the six compounds listed in the Action, namely, Formulae (3), (2) and (1). Apparently, the compounds of Formulae (4), (5) and (6) are not as preferred as the first three so that they can be taken in any order of priority.

Applicants respectfully traverse the election of species on the ground that the fluorine compounds disclosed (but not claimed) in this application are members of a specific group of compounds which cannot otherwise be defined by generic language but which nevertheless have a community of chemical or physical characteristics. This kind of group resembles a "Markush Group," which has long been an acceptable manner of expressing together operable substances which are not definable by generic language. All members of such a grouping need only possess at least one property in common which is mainly responsible for the function in the claimed relationship. The common characteristics and the utility in a generic sense suffices.

Applicants make no statement regarding the patentable distinction of the species, but note that for the restriction to be proper, there must be patentable differences.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction and Election Requirements. Withdrawal of the requirements is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

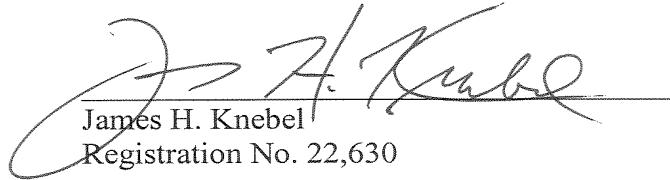
Respectfully submitted,

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